SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 716

JAMES J. CLAYTON,

Petitioner,

vs.

THE STATE OF ALABAMA

BRIEF IN SUPPORT OF PETITION

Petitioner in this cause would respectfully show that the Honorable Supreme Court of the United States has jurisdiction of this cause under the 14th Amendment of the Constitution of the United States, Section 1, which reads, "Nor shall any State deprive any person of life, liberty, or property, without due process of law." Petitioner contends that the confessions, as shown by this record, were induced and caused by beatings, slaps, threats, and prolonged examination, and, therefore, said confessions were obtained in flagrant violation of said 14th Amendment to the Constitution of the United States. Petitioner is a citizen of the State of Alabama and was convicted of the crime of arson in Dale County, Alabama, on August 23rd, 1943; said case was duly appealed to the Court of Appeals of Alabama, and which

said court affirmed the case on April 17th, 1945; petitioner applied for rehearing in said court on April 24th, 1945, and the same was denied on May 15th, 1945. Petitioner filed an application for certiorari with the Supreme Court of Alabama asking that said Supreme Court review the action of the Court of Appeals, the same being filed May 29th, 1945, and denied June 14th, 1945; application for rehearing was filed in the Supreme Court of Alabama on June 27th, 1945, and denied October 11th, 1945. Petitioner has, therefore, exhausted, finally, all remedies with the State Courts of Alabama, the same being finally exhausted when the Supreme Court of Alabama denied rehearing on October 11th, 1945.

Statement of Facts

Petitioner was indicted for arson, the burning of an automobile in Dale County, Alabama, the property of one Mr. Pratt, the employer of petitioner. Pratt, a white man, was indicted at the same time petitioner was indicted. He has never been tried. The State proceeded on the theory that the car was burned by petitioner to collect insurance for Pratt, but the State utterly failed to prove that there was any insurance. Therefore, petitioner stands convicted of a crime which he could have no possible motive or purpose to commit, and which resulted because there happened to be a general arson count in the indictment.

Petitioner's conviction depends largely upon the confessions shown in this record. Petitioner would respectfully shown, as shown by his own testimony on page 20 through 26 of the transcript, that he was beaten with a black jack, slapped, threatened, and questioned during an entire day; as a result, the confessions were made. The State witness, Zack Norris, a highway patrolman, as shown on pages 13 and 15 of the transcript, and B. F. Craven, as shown on pages 18 and 19 of the transcript, in part,

corroborates petitioner's statement as to the beatings, slappings, threats, and questionings. It is further corroborated by the sheriff's answer in open court, as shown on page 18 of the transcript, that the sheriff had cleaned the bloody shirt belonging to petitioner. Under this statement of facts, petitioner respectfully submits that his rights under the 14th Amendment to the Constitution of the United States, have been flagrantly violated.

Assignment of Error

I. The Supreme Court of Alabama erred in not reviewing the Court of Appeals of Alabama, and for failure to grant petitioner a new trial because of the confessions as shown by this record; the same having been obtained by beatings, slappings, threats, and prolonged examination. The record affirmatively shows that Motion for exclusion was duly made to the Trial Court on such grounds, and the same was duly raised in the Court of Appeals of Alabama and in the Supreme Court of Alabama.

Argument

Petitioner respectfully submits that the facts as shown by the State's own witnesses are the best argument for reversal of this case. Attention is respectfully called to the following:

Zack Norris, the highway patrolman, said:

> "I later saw the defendant and he made a statement to me. I did not nor did anyone else make any threats against the negro, offer him any reward or abuse or mistreat him in any way. *Mr. Wilkinson*, a deputy sheriff did not whip the negro, *but slapped the negro after he practically* made the statement. That was all that was done to him. He was impudent * * * He made a statement and it was reduced to writing. *He was slapped before he completed* the statement." (Transcript page 14.)

"Mr. Wilkinson and myself took the negro in charge *that morning.* Others came up *later in the day.* Others were present and he made his statement in the *late afternoon. It was late in the afternoon when he was slapped.* He was in jail. *Mr. Wilkinson didn't talk to him at all.* He was slapped down at the sheriff's office where we had him. Wilkinson slapped him down at the sheriff's office. He made a statement at the sheriff's office. He was both at the sheriff's office and at the jail that day. *We put him back in jail after he was slapped.* It was the next day in jail that we talked to him again. After the conversation in jail *and after we had him in the sheriff's office we* were not satisfied with his statement and went back and talked to him the next day."

"• • • after we had the conversation with him about Mr. Pratt and what he said, we had another conversation with him because *we wanted to see if he wouldn't admit that he* burned it."

"We didn't slap him because he wouldn't admit it. He told us previous that he hadn't burned it, and we went back to see if he wouldn't say he didn't burn it. *Mr. Wilkinson did not slap him when the negro was with me.* He denies all time he burned the car. • • • We had two or three conversations with the negro. I don't know whether it was four or five or not." (All above transcript page 15.)

(Emphasis added throughout where underscored.)

It is clearer to analyze each statement in their order. Norris presents a sordid situation. His evasiveness can leave no one unconvinced that this helpless negro was slapped into making a satisfying statement to these officers when they "were not satisfied with his statement" when he "denies that he burned the car", as Norris put it, "we wanted to see if he wouldn't admit that he burned it."

From "that morning" to "late afternoon" the negro steadfastly denied any guilt. He was then "slapped" because he was "impudent", they say.

Impudent to whom? * * * they do not say. They do not testify as to anything he said or did. All he said, at first, was that he was innocent. After that long day, after being "slapped", they got their statement. Was that "impudence"?

Wilkinson slapped him. Was he impudent to Wilkinson, * * * No, Norris testifies that "Mr. Wilkinson didn't talk to him at all."

The picture is easy. After a long day of questioning by the officers, Wilkinson, who had said nothing, got the results that questions couldn't get; he "slapped" the negro and a confession was forthcoming.

Norris says that the statement was practically made or was in the making, when the "slap" resounded. Maybe the confession was not then at the point where they "were satisfied", they hurried it. But if any part was induced by the "slap" I do not believe this Court will countenance it.

Norris, however, concluded by saying, "Mr. Wilkinson did not slap him when the negro was with me." This, after having told in detail just what had taken place.

Ray Peters, Policeman of the City of Ozark, testified next:

> "He denied everything in jail except having the car in his possession * * * We took him from the jail to the sheriff's office. Wilkinson could have slapped him but he didn't do it in my presence and I don't know that he slapped him. In my presence they didn't do anything to him that I saw, I don't know what was done when I wasn't looking." (Transcript pages 16 and 17.)

B. F. Craven, next testified, for the State:

> "I saw this defendant and had two conversations with him. The first one was in the sheriff's office. The next one was in the jail. It was after supper that we talked to him at the sheriff's office * * * at that time no one threatened him and no one offered him any

reward or inducement to make a statement and *no one slapped him.. After we got down in the sheriff's office, Mr. Wilkinson did slap him after he kept talking back to him. Mr. Wilkinson told him nobody was mad with him.*

"This was at least 30 minutes after he made the statement. I told him I only wanted him to tell the truth * * * he denied anything about the fire." (Transcript page 18.)

"Mr. Wilkinson slapped the negro when we first got down to the sheriff's office. I hadn't even talked to the negro at that time." (Transcript page 19.)

Craven completely contradicts himself. He last said that the slapping was "when we first got down to the sheriff's office." He first said the slapping was "30 minutes after he made the statement," yet, the statement was made, without dispute, at the sheriff's office on that one occasion.

Craven "hadn't even talked to the negro" when Wilkinson slapped him; the confession could not have been made before the slapping under those circumstances, for Craven testified about talking with the negro and the negro making the confession.

We do not believe that this Court will permit a confession to convict a man under those circumstances.

Craven is contradicted by Norris, who says "but slapped the negro after he practically made the statement * * * he was slapped before he completed the statement."

Norris said Wilkinson had nothing to say. Just slapped the negro. Craven said Wilkinson talked to him, told him "nobody was mad."

Clarence Weeks, the sheriff, testified:

"I was present when he made a statement to Mr. Craven. I did not knock him down or bloodly his shirt. Nobody hit him with a black jack. Mr. Norris did not interfere

in any way. No one whipped the negro *and no one slapped him.* Norris was there. I was not there and never met the negro there. There were four, five, or six of us. When they took the negro in there to question him, they asked me to come in. No one knocked the negro down."

Can this confession be upheld, merely because of this sheriff's statement, contradicted by everyone else, if decisions by the United States Supreme Court under the 14th Amendment are adhered to? • • •

The defendant vigorously denied any guilt. He was a shoe repair man. He had worked at Ft. Benning, and was working at Camp Rucker when the fire occurred. He had been repairing a shoe repair machine. He had cleaned the machine with kerosene, and the can was left in the car. On the night the car burned he had a flat, and had to leave the car by the road. He took off the best tires and brought them to his room. This, we submit, in this time of tire shortage, is what anyone else would have done.

The tires were found in his room • • • but what of it? He admitted all this freely. He did what any other man would have done now.

Clayton testified about the confessions: He said:

"That afternoon, Mr. Wilkinson and the A. B. C. man came into the jail and Mr. Wilkinson threatened to beat me up. Mr. Wilkinson hit me with a black jack up there and then they brought me downstairs and I said to them 'You can beat me as much as you want to, I am not going to tell a lie'. I said I was working for Mr. Pratt just like I would work for you. I said I did what he told me to do and then the A. B. C. man slapped me. He slapped me a couple of times and Mr. Norris made him stop whipping me. Mr. Weeks slapped me down. Mr. Wilkinson hit me twice with a black jack. The other men were mean to me. *I bled over my shirt at the jail. If I had the shirt here I could show it to you.*"

"Mr. Lee (quoting transcript page 21) called for the shirt *and the sheriff answered that the shirt had been cleaned up as the negro had been out of jail for* months."

Notice, the sheriff answered that "the shirt had been cleaned up" * * * cleaned up for what reason?

Why should the sheriff clean the shirt? There is no law in Alabama requiring a sheriff to launder clothes for the prisoners in his jail.

Cleaned up for what reason? * * * Clayton gave the reason.

We submit that this is a clear case of a negro being whipped, beaten, and slapped into making a confession of a crime he did not commit, and had no reason to commit.

Respectfully submitted,

JOHN C. WALTERS,
Counsel for Petitioner.